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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 534

SAM ORLANDO,

Petitioner,

vs.

THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

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No. .....

SAM ORLANDO,

Petitioner,

vs.

THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

MAY IT PLEASE THE COURT:

A.

Summary statement of the matter involved.

Your petitioner, Sam Orlando, a natural born citizen of the United States and a citizen of the State of Illinois, was convicted in the Criminal Court of Cook County, Illinois, and sentenced to the penitentiary for advising,

procuring and abetting the falsifying of a poll list. Your petitioner was a precinct captain in one of the election precincts, in Chicago, and was indicted, along with his co-captain and the judges and clerks of election, for various crimes enumerated in the election law and contained in the indictment, consisting of nine counts. Orlando was granted a severance on motion of the prosecutor. The State *nolled* all but the sixth (Abst. 7) and eighth counts (Abst. 11), and after a trial the jury returned a verdict as follows (Abst. 18):

> "We, the jury, find the Defendant, Sam Orlando, Guilty of advising, procuring and abetting the falsifying of a poll list, as charged in the indictment."

The usual motions for new trial and in arrest of judgment were overruled, and judgment was entered sentencing Orlando to the penitentiary (Abst. 18). The other defendants were not prosecuted.

At the trial the judges and clerks testified for the State concerning various frauds committed by them. It was claimed by the members of the board that the crimes so committed by them were performed at the instance and behest of Orlando, and that Orlando aided them in their frauds. Orlando testified in his own behalf denying participation.

Your petitioner waived the jury in compliance with the practice. The State demanded a jury trial (Abst. 18, 28) and the defendant was compelled to go to a jury over his objection.

Your petitioner was originally tried and acquitted under an indictment charging conspiracy arising out of the same election frauds, but when he sought to show former acquittal the court ruled that the two crimes were not alike and that there was therefore no former jeopardy and refused to allow the evidence.

The prosecutor was permitted, over objection, to show that your petitioner stood upon his constitutional right to refuse to answer questions asked by the State's Attorney in his office during his investigation. The punishment is one to ten years in the penitentiary (Abst. 18). Under the law as construed by the Illinois Supreme Court, this means ten years. The election laws provide various penalties for the same offense.

The judgment of the trial court was affirmed by the Supreme Court of Illinois on May 13, 1942. The Justices divided four to three (R. 15). A petition for rehearing was denied and the judgment was made final on September 17, 1942 (R. 19).

B.

Reasons relied on for the allowance of the writ

In this Honorable Court the judgment is assailed upon the ground that your petitioner was denied due process of law and equal protection of the laws in contravention of the Fourteenth Amendment to the United States Constitution.

The Federal questions were presented and overruled in the trial court and again presented to no avail in the highest court of the State.

It is respectfully contended that the State court has decided the following Federal questions not in accord with the applicable decisions of this Honorable Court.

1. When the defendant waived a jury the constitution and laws of Illinois did not give the State the right to demand and secure a jury trial over the objection of the defendant. It was specifically claimed at the time in the trial court (Abst. 28) that due process of law as guar-

anteed by the Fourteenth Amendment to the Federal Constitution was violated. Although the point was again urged as a Federal question upon the Supreme Court (Abst. 197, 198, points 6 and 26), relief was denied.

2. Your petitioner had been previously tried and acquitted for what he claims to be the same offense. The trial court held (R. 12), as a matter of law, that the offenses were not the same, and the Supreme Court of Illinois sustained this view. The question was presented to the trial court (Abst. 188) as an error depriving your petitioner of Federal rights and again as a Federal question to the Supreme Court (Abst. 199). The Supreme Court held that the offenses were not the same. This, we contend, is error reviewable here.

3. The prosecutor was permitted to show over objection that your petitioner had previously stood upon his constitutional right to refuse to answer questions in the office of the State's Attorney. This point was preserved as a Federal question in the trial court (Abst. 188) and in the Supreme Court (Abst. 199). The Supreme Court found contrary to the record that there had been no objection and that no prejudice was shown (R. 13). It is contended that this was a denial of due process of law as guaranteed by the fourteenth amendment.

4. The punishment of ten years in the penitentiary amounts to cruel and unusual punishment.

Conclusion

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Illinois, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 26540, The People of the State of Illinois, Defendant in Error, *vs.* Sam Orlando (Impleaded), Plaintiff in Error (which record is filed herewith), and that the said judgment of the Supreme Court of Illinois may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

WM. SCOTT STEWART,
Counsel for Petitioner.